

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Housing and Environmental Standards Work Group Wednesday, September 18, 2013, 2:00 PM Senate Room A, General Assembly Building

I. Welcome and Call to Order

Senator John Watkins, Chair, called the meeting to order at 2:03 PM.

Work Group members in attendance: Senator John Watkins, *Chair*; Senator George Barker; Delegate David Bulova; Delegate Daniel Marshall; Delegate Barry Knight; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Brian Buniva; Ron Clements, *Virginia Building & Code Officials Association*; Michael Congleton, *Fairfax County Planning Commission*; Tyler Craddock, *Manufactured & Modular Housing Association*; James R. Dawson, *Virginia Fire Prevention Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; John Hastings, *Virginia Housing Development Authority*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Ralston King, *Whitehead Consulting*; Art Lipscomb, *Virginia Professional Fire Fighters*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Shaun Pharr, *Apartment and Office Building Association*; Ed Rhodes, *Virginia Fire Chiefs Association*; Emory Rodgers, *Department of Housing & Community Development*; Neal Rogers, *Virginia Housing Development Authority*; Michael L. Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*.

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Recurrent Flooding Study for Tidewater (SJR 76, 2012)

- **Bob Bradshaw, President and CEO, Independent Insurance Agents:** I will give a brief overview of the 2012 Biggert-Waters Flood Insurance Reform Act. In 2010, 103.3 million or 39% of the national population lived in counties along the shoreline. These counties constitute 10% of the total land area. From 1970 to 2010, the population of these counties increased almost 40% and is projected to increase 10% by 2020.

- The National Flood Insurance Program (NFIP) is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The Program enables property owners in participating communities to purchase insurance protection from the government against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. As of April 2010, the program insured about 5.5 million homes, the majority of which were in Texas and Florida. The NFIP was actuarially sound until Hurricane Katrina – a \$17 billion event. The NFIP collects around \$3 billion a year in premiums.
- 2012 Biggert-Waters Flood Insurance Reform Act (FIRM) eliminated short term reauthorizations, phased out subsidized rates, created changes in grandfathered, created non-primary dwelling changes, added installment payment options, and added requirements to escrow NFIP premium in all cases.
- The major provisions of this act included program extension, an increase in average annual limit on premium growth, and a phase-in of actuarial rates for certain properties.
- Eighty-one percent of insured are not affected because they already are actuarially rated (over 4 million properties). Five percent pre-FIRM non-primary residences, business properties, and those with severe repetitive loss will see 25% increases until the true risk premium is reached (over 252,000 properties).
- Ten percent of the pre-FIRM primary residences (over 578,000 policies) will retain their subsidies until sold to a new owner or if there is a policy lapse. Four percent (over 244,000 policies), which include multifamily or condos, will not see an immediate increase.
- Some primary provisions include actuarial rates for Certain Severe Repetitive Loss Properties, extension of premium rate subsidy on new policies or lapsed policies, considerations in determining chargeable premium rates, payment of premium in installments, use of private insurance to satisfy mandatory purchase requirement, penalties for lender non-compliance with mandatory purchase requirements, the escrow of flood insurance payments, availability of insurance for multi-family properties, clarity regarding coverage limits for residential and commercial properties, and participation in state disaster claims mitigation.
- The bill required many studies, including a Study on Business Interruption and Additional Living Expenses Coverage, Study of Participation and Affordability for certain policy holders, Study on Interagency Coordination, Study on Pre-FIRM Structures, Study on Contractors Unused by FEMA, Study on NFIP Determinations, Study on Privatization, Study on the Participation of Native Americans in the NFIP, Report on Financial Conditions of the NFIP.

- Insurers are required to be educated before selling this type of insurance.
- **Mike Toalson:** On a typical residence, what percentage of the premium gets subsidized today?
 - **Bradshaw:** Twenty percent of policies are subsidized. How much of that would be hard to say.
- **Toalson:** Are they updating maps that determine who is in flood zones?
 - **Bradshaw:** Flood mapping is improving greatly.
 - **Emory Rodgers:** Yes, they are improving maps, and there will be a greater number of properties that will deal with flooding issues.
- **Art Lipscomb:** How will these affect residents who live in condos where some residents are full time and others are not? How does that affect their policy?
 - **Bradshaw:** It depends on the independent insurance agency.
- **Sen. Watkins:** Could you list the types of property that would incur higher insurance rates?
 - **Bradshaw:** Non-primary residences, severe repetitive loss property, any property where flood losses have exceeded property value, any business property, and any property that has sustained substantial damage over 50% of market value or has improved over 30%. They will see skyrocketing premiums over the next four years.
- **Del. Knight:** Can a private insurer be competitive?
 - **Bradshaw:** It would be in the excess surplus lines market, which can have broader policies and is not regulated by the Bureau of Insurance
- **William Skrabak, Director, Office of Environmental Quality:** In Alexandria, we are very susceptible to tidal influences. Old Towne has been getting nuisance flooding for hundreds of years, and we have a pretty aggressive flood plain ordinance.
 - We are planning flood mitigation at the 10-year flooding event. If we targeted the 100-year event, the character of old town would change with the levee that protects from such an event.
 - We are looking at an elevated walkway. We will be flood proofing buildings and connecting alleyways. We will use sandbagging and other techniques, but we are also looking into new technology tackle flooding episodes.
 - One of our most recent loses was from a rain event, not tidal. With that, we have an aggressive stream and flood channel maintenance program. We go in and try to manage vegetation on the banks of the flood control channels. Costs going up on maintaining carrying capacity in these channels.

- We are prone to flash flooding events, and we have been working with our neighbors to encourage awareness. We have several flood flow gauges to monitor our streams in real time. We recently installed a warning system in one of our more susceptible areas.
- We do a lot of community education and outreach. We participate in the Community Rating System, and training for staff is a necessity. We have been successful partnering with our universities, and I encourage that.
- With this Community Rating System, we are currently at a scale of 7. That means that anyone buying flooding insurance in Alexandria will get a 35% discount off the top. We are one of the few that will be shifting to a 6, making it a 20% discount.
- Our main effort is not just to educate those in the flood plain, but those neighboring the floodplain. I think getting the resources to the local floodplain administrators, like grants and training, is vital.
- **George Homewood**, *AICP CFM Assistant Director of Planning, City of Norfolk*: The idea of recurrent flooding poses some interesting questions. The City of Norfolk is culturally important, commercially and economically important, strategically and militarily important (US and Atlantic Alliance/NATO), and is home to a quarter of a million Virginians.
 - Sea levels are rising; the cause is not relevant to discussion about adaption. Land is subsiding due to groundwater depletion combined with continued kinetic energy from historic asteroid impact that created the Chesapeake Bay. Storm frequency and intensity are increasing. The result is more places are getting wetter more often.
 - There are two components of recurrent flooding. The first is temporary flooding from storm events. This is managed primarily through floodplain regulation and building codes, it is familiar to local officials and the public in Virginia, and is tied to NFIP—height and extent are mapped on FIRM.
 - The second is permanent inundation, which is an unfamiliar new phenomenon in Virginia, and the extent will depend on amount of new sea level rise.
- **Homewood**: Norfolk has a long history of flooding from major storms. The 1933 Chesapeake-Potomac Hurricane and 1962 Ash Wednesday storms are the benchmarks. There have been four major flooding events in the past 10 years. Today, basic summer thunderstorms and lunar cycle spring tides can create serious flooding—“routine” flooding.
 - Over 44,000 parcels in Norfolk today are at risk of flooding, just under 25% of the land area of Norfolk.

- Repetitive loss properties have suffered more than one event that was covered by insurance or the payout was over \$1000, and have increased over four times since 2005.
- Assuming only 1.5 of relative sea level rise following the historic trend, approximately 5,500 parcels would be underwater entirely or in significant part. The assessed value of these parcels is \$3.37 billion. At 3 feet of sea level rise, nearly 20,000 parcels valued in excess of \$10 billion are inundated. Also inundated is 14-120 miles of roadways, 110-950 businesses employing 2,000-15,000 employees, 3,500-13,000 housing units with 10,000-36,000 residents, and 125-250 acres of public parkland and protected open space.
- Norfolk's approach to adaption has three parts. The first, plan and prepare, includes Floodplain Development Standards requiring three feet of freeboard, U.S. Army Corps of Engineers Studies, Secure Commonwealth Panel, and Public/Private partnerships. The second, adapt, would include action with the Brambleton Avenue Improvement Project, Breach Nourishment and Dune Protection, and Potential Flood Barriers. The last, communication, would require use of web and mobile networks, community meetings, public media, and public notification.
- **Homewood:** Combination of tide gates and flood barriers together with substantial barriers together with substantial redesign of storm sewer systems is estimated to cost in excess of \$1 billion, and will protect about half of the at-risk parcels from inundation.
 - Adaptions to live with the water include raising roadways and improving drainage systems, improving construction techniques and building codes, and relocation critical facilities. For parcels we cannot protect, the process would consist of identifying where the water will be allowed to reclaim the land, developing strategies for graceful retreat to protect public safety and welfare, and establishing rough timelines based on water levels.
 - The time to begin thinking about this is now, now when the water is lapping at our doorsteps.
- **Homewood:** Governmental takings are well resolved constitutionally, by statute and in the courts. The Impacts of Acts of God, when one-time events, are generally settled with respect to legal ramifications. Sea level rise is slowly occurring—what are the Takings Doctrine implications for governmental entities trying to build in resilience while also protecting the public treasury? This is an important issue to work out now while not in a crisis situation. A legislative solution may be better than a judicial solution.
 - Another issue that a study commission may consider is that Flood Insurance through the NFIP is getting more expensive as we move toward Congressionally mandated full actuarial rates. Some private insurance providers are pulling out of flood-prone regions. Those continuing to cover casualty losses are raising premium rates and

increasing deductibles. This may lead to market-based realignments. Owners may be unable to repair damaged structures because of increased deductibles.

- **Sen. Barker:** Is the magnitude of the situation the same in jurisdictions with the same dynamics?
 - **Homewood:** There is a South Hampton Roads study, but I am no expert on it. I have seen the maps. Norfolk is heavily impacted as well as Poquoson and Portsmouth.
- **Toalson:** What percentage of your flooding is the result of rising seas and storm water events?
 - **Brian Pennington:** In the Hague area, 50% of the flooding causality is attributed to precipitation and the other 50% to tidal. In the city of Norfolk, the outflow pipes, which are submerged, create a syphoning affect pulling up the seawater and exacerbating the problem.
- **Del. Watkins:** Norfolk is so vitally located, particularly with the Department of Defense. Is there an evaluation of exactly how much water that can handle without adversely affecting national defense?
 - **Homewood:** That has been studied from many angles. The Core of Engineers is studying it, as well as the Navy. If you are talking about the access approaches, congestion and low elevation are both issues. It also depends greatly on the particular event.
 - **Pennington:** There has been a lot of analysis of all the property inside the gate to address the sea level issue. I do not have the exact details, but there has been a recent analysis by the Department of Defense where they highlight the Norfolk Naval Base as one of the top five military bases more susceptible to sea level rise.
- **Sen. Watkins:** It would be a huge deal for Virginia and our economy if these bases along with their ships and jobs left our state. We should take this seriously.

III. Uniform Statewide Building Code; County/Town Enforcement (HB 1574, R. Minchew, 2013) (SB 1239, M. Herring, 2013)

- **Emory Rodgers, Department of Housing and Community Development:** We have a proposed draft legislation that brings clarity and puts the terminology up to date in how the Uniform Statewide Building Code (USBC) is structured.
 - Part I of our proposed legislation is the USBC Virginia Construction Code changes only for correlation purposes, and Part II is USBC Virginia Rehabilitation Code changes for correlations purposes. Part III is clarification and correlation changes that deals with towns with a population of less than 3,500 people within counties.
- **Erik Johnston:** For a town with a population under 3,500, you have to inspect elevators; the county would have to do that currently. But there are other portions of the

Maintenance Code where that is optional, like for sidewalks, drainage, and overcrowding. The concern is that this language would prevent a county from adopting the Maintenance Code if they only wanted to focus on, say overcrowding, in one portion of the county.

- **Rodgers:** If the town wanted to go beyond those maintenance procedures, I do not believe this discourages them. That also goes beyond our scope, which is clarity.
- **Mark Flynn, Virginia Municipal League:** Does the county have authority to adopt the Maintenance Code for part of the county as opposed to part of the county?
 - **Sean Farrell:** I believe Stafford County attempted to do that, and was unable to in previous sessions. The Maintenance Code can be adopted in part, but it must be adopted county wide.
 - **Rodgers:** The county can also elect to do it on a complaint basis or a proactive basis.
- **Sen. Barker:** In towns with more than 3,500 people, are there other situations, beyond that of elevator maintenance, where the town may opt not to adopt to code, and the county is forced to take responsibility?
 - **Rodgers:** County would only be responsible for unsafe tenants and elevators.
- **Sen. Watkins:** Mark Flynn, can you show us the differences in your draft?
- **Flynn:** I believe the law ought to reflect the reality of the Commonwealth, which is not true with the current code.
 - For Parts II and III, if a town does not have its own building department or have an agreement with the county, then the county becomes responsible. My general proposal for Part III is that if the county and town have both adopted Part III, the county would be responsible for enforcement after the two have come to a non-monetary agreement.
 - I do think there is an unresolved issue dealing with the elevator inspections.
- **Sen. Watkins:** Mr. Rodgers, I am assuming your draft was the recommendation of the sub-group?
 - **Rodgers:** Yes, that's correct.
- **Sen. Watkins:** I think it would be helpful to take a vote on the recommendation from the sub-group. Mr. Flynn, I think it would be helpful for you to underline the differences between your drafts.
- **Flynn:** I think the sub-group was focusing on the technical changes, and my draft has more of a policy change.
- **Sen. Watkins:** Do I hear a motion that we go forward with the recommendation from the subgroup?

- The motion was seconded and the motion passed.

IV. **Statewide Fire Prevention code: Authority to Recover Costs (SB 822, 2013)**

- **Emory Rodgers**, *Department of Housing and community Development*: I am reporting on the regulatory status of proposed State Fire Marshal fees for the operation of the State Fire Marshal's Office. There are many upcoming meetings to discuss these.
- **Sen. Watkins**: My understanding is that the fee structure process had become too slow, and that was why the authority was to move to the Fire Services Board.
 - **Rodgers**: In our regulatory process, fees have to go through a large process. Our codes are very regularly changed to bring them up to date, and I believe they are some of the best in the country.
- **Sen. Watkins**: I think the Fire Services Board would run up against the same regulatory structure.
- **Michael Toalson**: The private sector supports retaining it where it is, and those are the people who pay the fees.
- **Sen. Watkins** asked if there were a recommendation.
- There was none.

V. **Public Comment**

- **Sen. Watkins** asked if there were questions or comments from the public.
- **Bob Matthias**, *City of Virginia Beach*: Sea level rise is a major concern and I thank you for taking time to discuss this issue.
- **Randy Wheeler**, *City of Poquoson*: Especially on the tenth anniversary of Hurricane Isabelle, it is becoming apparent that flooding is a huge issue, and I believe that state legislation can be of great help in facing this issue.
- **Fred Brusso**, *City of Portsmouth*: I have been involved with flood plain management for a long time. There are a number of ways the state could help with this through regulations, as well as training. Thank you for your time.
- **Flynn**: In real estate conveyance world, if a house is in the flood plain now, what notice is there?
 - **Sen. Watkins**: It is all in the contract.

VI. **Adjourn**

- Upon hearing no further comment, **Sen. Watkins** adjourned the meeting at 4:09 PM.